



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-S-C-

DATE: OCT. 11, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an adult day care facility, seeks to employ the Beneficiary as an accountant. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on the ground that the minimum educational and experience requirements for the proffered position, as stated on the labor certification, were less than required for the requested classification of advanced degree professional.

On appeal the Petitioner asserts that it meant to request professional classification on the Form I-140, Immigrant Petition for Alien Worker, that it mistakenly checked the box for advanced degree professional on the Form I-140, and that the Director unreasonably refused to allow the Petitioner to amend the Form I-140 to change the requested classification to professional.

Upon *de novo* review, we will withdraw the Director's decision and remand the case for further consideration and the issuance of a new decision.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

To support a petition seeking classification of the beneficiary as an advanced degree professional, the labor certification must specify that the minimum requirements for the job are either (1) a U.S. master's degree or a foreign equivalent degree, or (2) a U.S. baccalaureate degree or a foreign equivalent degree plus five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2) and (k)(3)(i). To support a petition seeking classification of the beneficiary as a professional, the labor certification must specify that the minimum requirement for the job is a U.S. baccalaureate degree or a foreign equivalent degree. *See* 8 C.F.R. § 204.5(l)(3)(ii)(c).

II. ANALYSIS

The issue on appeal is whether the Director properly considered the Petitioner's attempted amendment of the Form I-140 to change the requested classification from advanced degree professional to professional. As filed by the Petitioner, the Form I-140 indicated in Part 2.1.d. that the petition was being filed for a member of the professions holding an advanced degree or an alien of exceptional ability. The petition was accompanied by a labor certification that specified the minimum requirements for the position of accountant as a bachelor's degree in the field of accounting or business administration in money and banking and six months of experience in the job offered. The Director sent the Petitioner a request for evidence (RFE) advising that the labor certification's minimum requirements of a bachelor's degree and six months of experience did not support the requested classification of advanced degree professional. The Petitioner responded to the RFE by stating that:

[W]e accidentally checked the wrong petition type on Form I-140. The [B]eneficiary is a professional with a degree equivalent to a U.S. bachelor degree, not a professional holding an advanced degree. Therefore, please find an amended page 1 of Form I-140 correcting the petition type.

On the newly-submitted page 1 the box at Part 2.1.e. was checked indicating that the petition was being filed for a professional.

In denying the petition the Director stated that the record did not support the Petitioner's claim that it accidentally checked the wrong box for "petition type" on the Form I-140. The Director quoted an excerpt from page 2 of the support letter submitted with the petition which reads:

Our company is willing to accept a three-year Bachelor Degree. The minimum prerequisites for the offered position clearly mark it as a specialty occupation that requires a person of distinguished merit and ability.

Based on the above language in the Petitioner's initial support letter the Director stated that "the evidence does not support the [P]etitioner's claim that the incorrect box was mistakenly checked" on the Form I-140. Since the petition stated that it was being filed for an advanced degree professional, the Director concluded that the labor certification requiring only a bachelor's degree and six months of experience did not support the requested classification. The Director also found that the Petitioner

could not make material changes to the petition in an attempt to rectify its deficiency and conform it to USCIS requirements, citing *Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm'r. 1998).

On appeal the Petitioner asserts that its intention to seek professional rather than advanced degree professional classification on the Form I-140 petition is evident in the sentence preceding the two sentences quoted by the Director from its initial support letter. That sentence reads as follows:

In order to perform the duties [of the accountant position], the candidate must have at least a Bachelor Degree in accounting or business administration in money and banking as well as 6 months experience in [the] position offered.

These requirements are consistent with the labor certification requirements and, according to the Petitioner, further proof that its marking of the advanced degree professional box on the petition was a mistake. The Petitioner asserts that it is not attempting to make a material change to its petition, but simply attempting to correct an inadvertent mistake.

During the adjudication of an I-140 petition, a petitioner may request that USCIS change the requested preference classification to correct a clerical error in Part 2 of the form. The request must be made before an initial decision is made on the petition. After receiving the request, the Director determines whether to change the classification based on the facts of the case. See <https://www.uscis.gov/forms/petition-filing-and-processing-procedures-form-i-140-immigrant-petition-alien-worker> (last visited September 21, 2018).

In this case the Petitioner's request to change the requested preference classification was timely insofar as it was made before the Director's denial decision. Furthermore, it is not clear that the Director's refusal to accept the Petitioner's request to change the petition type from advanced degree professional to professional was based on a proper consideration of the facts in this case. The Director did not explain how the language he quoted from the Petitioner's initial support letter justified finding that the record did not support the Petitioner's claim that it mistakenly checked the wrong box for petition type on the Form I-140. The language quoted by the Director does not appear to indicate that the Petitioner sought classification as an advanced degree professional.

In view of the Director's lack of clarity in his decision, we will remand this case for further consideration of the Petitioner's claim that its selection of advanced degree professional as the petition type on the Form I-140 was a clerical error, and whether it should be allowed to correct such an error by amending the petition type to professional. If an affirmative decision is made on this issue, the Director shall determine whether the Beneficiary is eligible for such classification. In connection with this determination, the Director may consider whether the Beneficiary's educational credentials and field(s) of study at [REDACTED] and [REDACTED] of Finance and Economics in China are equivalent to a U.S. bachelor's degree and whether they meet the minimum educational requirements of the labor certification.

III. CONCLUSION

For the reasons discussed above, we will remand this case to the Director for further consideration of the Petitioner's request to amend the petition type from advanced degree professional to professional and, if warranted, a determination as to whether the Beneficiary qualifies for the requested classification.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of C-S-C-*, ID# 1815049 (AAO Oct. 11, 2018)